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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,623	05/24/2001	Takaaki Shimada	SHC0124	2936

832 7590 07/17/2002

BAKER & DANIELS  
111 E. WAYNE STREET  
SUITE 800  
FORT WAYNE, IN 46802

EXAMINER

ZEC, FILIP

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 07/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/864,623

Applicant(s)

SHIMADA ET AL.

Examiner

Filip Zec

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,817,087 to Takabayashi. Takabayashi depicts a shorts type disposable diaper (FIG. 1, 1), comprising two liquid permeable waist sheets, back and top (10 and 30 combined), with two elastic members (11 and 21) located at the waist and along the opening for legs, respectively.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,817,087 to Takabayashi. Takabayashi discloses applicant's basic inventive concept, a shorts type disposable diaper (FIG. 1, 1), comprising two liquid permeable waist sheets, back and top (10 and 30 combined), with two elastic members (11 and 21) located at the waist and along the opening for legs, respectively, substantially as claimed with the exception of placing a third elastic region and specifying the strength of bonding zones to be in a range of 4 to about 40 N

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with respect to a 25 mm longitudinal dimension of said bonding zone. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the disposable undergarment of Takabayashi, by adding a third elastic member below and in parallel the first one (11) in order to improve the efficiency of the product. Also, from the discussion in columns 5-8, one can assume that the selection of proper elastomer to be used can render the specs claimed by the applicant.

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No.5,163,932 to Nomura, Hironori et al.

U.S. Pat. No.5,628,738 to Suekane, Makoto

U.S. Pat. No.5,746,731 to Hisada, Kenichi

U.S. Pat. No.5,624,420 to Bridges, Russell et al.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Filip Zec whose telephone number is (703) 306-3446. The examiner can normally be reached Monday through Friday, with the exception of every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on (703) 308-2597. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3230 for regular communications and (703) 872-9303 for After Final communications.

Application/Control Number: 09/864,623

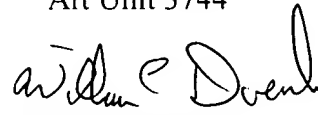
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

Filip Zec  
Examiner  
Art Unit 3744

FZ  
July 12, 2002

  
**WILLIAM DOERRLER**  
**PATENT EXAMINER**  
**GROUP 3400**